UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,139	03/26/2001	Yukiko Takita	914-126	5884

23117 7590 10/20/2005

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER	
NEURAUTER, GEORGE C	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/816,139	TAKITA, YUKIKO	
	Examiner	Art Unit	
	George C. Neurauter, Jr.	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-12 and 14-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6-12 and 14-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-4, 6-12, and 14-43 are currently presented and have been examined.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 August 2005 has been entered.

Response to Arguments

Applicant's arguments, see pages 1-18 of the response filed 1 August 2005, with respect to the rejection(s)of claim(s) 1-4, 6-12, and 14-43 under "RealAudio" have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the references cited below.

Claim Interpretation

The Examiner emphasizes for the record that the claims employ broad language including the use of words and phrases such as "continuation signal" or "refresh signal" enabling

content to be reproduced continuously which have broad meanings in the art, specifically any sort of signal that enables the reproduction of received encoded data in any sort of wireless or radio network system which is interpreted to include any sort of data or signal excluding the content itself that is able to be received by a receiver and allows the receiver to reproduce the content, the receiver being within a distance range of a distributor of content in order for the receiver to receive the content. In addition, the Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. Since the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is required to interpret the claim limitations in terms of their broadest reasonable interpretations while determining patentability of the disclosed invention. See MPEP 2111. In other words, the claims must be given their broadest reasonable interpretation consistent with the specification and the interpretation that those skilled in the art would reach. See *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999), and *In re American Academy of Science Tech Center*, 2004 WL 1067528 (Fed.

Cir. May 13, 2004). Any term that is not clearly defined in the specification must be given its plain meaning as understood by one of ordinary skill in the art. See MPEP 2111.01. See also *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003), *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003). The interpretation of the claims by their broadest reasonable interpretation reduces the possibility that, once the claims are issued, the claims are interpreted more broadly than justified. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). Also, limitations appearing in the specification but not recited in the claim are not read into the claim. See *In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)*.

Therefore, the failure to significantly narrow definition or scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims in parallel to the Applicant in the response and reiterates the need for the Applicant to distinctly define the claimed invention.

The element "continuation signal" or "refresh signal" defined on page 12, lines 28-33 of the specification and recited in claims will be given its broadest reasonable interpretation and will be interpreted by the Examiner as any signal that may accomplish continuous reproduction of relevant content to any number of receivers that is consistent with the disclosures of the specification and the interpretation that those skilled in the art would reach. See MPEP § 2111.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 6, 10-29, 30-32, 34-35, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5 613 190 to Hylton.

Regarding claim 1, Hylton discloses a content distribution system comprising at least one content reception apparatus ("Digital Entertainment Terminal" or "DET") receiving and reproducing distributed content ("multimedia") and a content distribution apparatus distributing said content (column 7, line 66-column 8, line 28),

wherein said content distribution apparatus distributes only within a specified physical area a continuation signal ("status interrogation signal") for enabling said content to be reproduced continuously (column 22, line 66-column 23, line 14).

Hylton does not expressly disclose wherein said content reception apparatus is unable to reproduce said content while said content reception apparatus is outside the specified physical area and unable to receive said continuation signal.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hylton since the reference suggests that the content reception apparatus may not be able to receive any signals from

the content distribution apparatus (column 23, lines 11-14) and that the content reception apparatus and content distribution apparatus operate in a limited area wherein the apparatuses can communicate ("premise"; see also column 9, lines 1-8). In view of these suggestions and teachings shown above, one of ordinary skill would have found it obvious that the content reception apparatus cannot reproduce content if it is moved outside of the specified physical area and is unable to receive the continuation signal, thereby the content reception apparatus is unable to continue to receive and reproduce any content.

Claims 2, 10, 17-25, 27, 34-35, and 42 are also rejected since these claims recite substantially the same limitations as recited in claim 1.

Regarding claim 3, Hylton discloses the content reception apparatus according to claim 2, wherein said received content is reproduced according to reproduction procedure information indicating a procedure for reproducing said content. (column 12, lines 42-67)

Regarding claim 4, Hylton discloses the content reception apparatus according to claim 3, wherein said reproduction procedure information is received together with said content. (column 12, lines 42-67)

Regarding claim 6, Hylton discloses the content reception apparatus according to claim 2, wherein said content reception apparatus comprises information presentation means for receiving and presenting content-specifying information ("menu") specifying respective types of said content, and said content which is designated based on said content-specifying information presented by said information presentation means is requested and received. (column 5, lines 55-65)

Regarding claim 11, Hylton discloses the content distribution apparatus according to claim 10, wherein said content distribution apparatus further comprises means for managing the number of said distributed contents. (column 6, lines 7-23)

Regarding claim 12, Hylton discloses the content distribution apparatus according to claim 10, wherein said content distribution apparatus distributes reproduction procedure information indicating a procedure for reproducing said content. (column 12, lines 42-67)

Regarding claim 13, Hylton discloses the content distribution apparatus according to claim 10, wherein said continuation signal is distributed within a predetermined area. ("premise")

Regarding claim 14, Hylton discloses the content distribution apparatus according to claim 10, wherein said continuation signal is distributed by means of broadcasting. ("wireless distribution"; column 22, line 66-column 23, line 14)

Regarding claim 15, Hylton discloses the content distribution apparatus according to claim 10, wherein said content is distributed by means of broadcasting. ("wireless distribution of audio-video, control signals, and voice")

Regarding claim 16, Hylton discloses the content distribution apparatus according to claim 10, wherein, when said content distribution apparatus receives an acquisition request for acquiring said content as desired, said content distribution apparatus distributes said desired content to a source of said request. (column 5, lines 55-65)

Regarding claim 26, Hylton discloses the method according to claim 25, further comprising:

distributing a content reproduction application usable by a receiver for reproducing the distributed content. (column 12, lines 42-67)

Regarding claim 27, Hylton discloses the method according to claim 25, wherein the refresh signal is distributed periodically. (column 22, line 66-column 23, line 14, specifically column 23, lines 1-3)

Regarding claim 28, Hylton discloses the method according to claim 25, wherein the content and the refresh signal are distributed by broadcasting. ("wireless distribution"; column 22, line 66-column 23, line 14)

Regarding claim 29, Hylton discloses the method according to claim 25, wherein the content and the refresh signal are distributed wirelessly. ("wireless distribution"; column 22, line 66-column 23, line 14)

Regarding claims 30 and 31, Hylton discloses the method according to claim 25.

Hylton does not expressly disclose wherein the specified physical area within which the refresh signal is distributed is an airplance or a room, however, Hylton does disclose as shown above wherein the specified physical area within which the refresh signal is distributed is a home ("subscriber premise").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Hylton since the reference suggests that signals are distributed within a specified physical area as shown above. In view of these suggestions and teachings shown above, one of ordinary skill would have found it obvious to modify the reference so that the specified physical area is a room or an airplane since one of ordinary skill knows that a room and an

airplance are physical areas that would only require that the content distribution apparatus be moved to these physical areas in order to operate within these physical areas.

Regarding claim 32, Hylton discloses the method according to claim 25, wherein content is distributed to a particular receiver in response to a request therefrom. (column 5, lines 55-65)

Claims 7, 33, 36-41, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hylton in view of Examiner's Official Notice.

Regarding claim 7, Hylton discloses the content reception apparatus according to claim 6.

Hylton does not disclose wherein, when the number of said contents which can be distributed is predetermined for each of said types, said content-specifying information is updated based on type of said content received by said content reception apparatus.

Examiner takes Official Notice (see MPEP § 2144.03) that updating information in a menu based on information contained in a database was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the

examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Regarding claim 33, Hylton discloses the method according to claim 25, wherein the distributed content comprises a plurality of content types (column 5, lines 55-65).

Hylton does not expressly disclose wherein each content type has an associated number specifying the maximum number of receivers to which that content type can be distributed at any one time.

Examiner takes Official Notice (see MPEP § 2144.03) that limiting the number of content types to a maximum amount of receivers in order to conserve bandwidth in a network data streaming system was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Regarding claim 36, Hylton discloses a content reproduction method comprising receiving content at a receiving unit (column 7, line 66-column 8, line 28) and receiving at the receiving unit a refresh signal which is distributed only in a specified physical area (column 22, line 66-column 23, line 14).

Hylton does not expressly disclose setting a timer of the receiving unit based on the refresh signal and reproducing the received content for output to a user only during a time period specified by the timer.

Examiner takes Official Notice (see MPEP § 2144.03) that setting a timer such as a "timeout" timer in order to determine whether the receiver is able to receive signals from a distributor in a wireless network system was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169

USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Claims 38-40 are also rejected since claims 38-40 recite a storage device, receiver, and portable receiver that contain substantially the same limitations as recited in claim 36.

Regarding claim 37, Hylton discloses the method according to claim 36.

Hylton does not expressly disclose storing the received content in a storage device and deleting the received content from the storage device after the time period specified by the timer is over.

Examiner takes Official Notice (see MPEP § 2144.03) that storing received streaming content in a buffer and clearing the buffer in the event of a signal interruption in a content streaming network system was well known in the art at the time the invention was made. The Applicant is entitled to traverse

any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Claim 43 is rejected since claim 43 recite a method that contains substantially the same limitations as recited in claim 37.

Claim 41 is rejected since claim 41 recites a method that contains substantially the same limitations as recited in claims 1, 9, 7, and 33 in combination.

Claims 8 and 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hylton in view of US Patent 6 748 539 to Lotspeich.

Regarding claim 8, Hylton discloses the content reception apparatus according to claim 2.

Hylton does not expressly disclose wherein said content reception apparatus further comprises means for returning said received content to a distributor, however, Lotspeich does disclose this limitation ("check in"; column 1, lines 30-44)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since Lotspeich discloses that returning received content to a distributor allows for a limited time distribution of content to a user for a fee (column 1, lines 33-39). In view of these specific advantages and that the references are directed to distributing content, one of ordinary skill would have been motivated to combine these references and would have considered them to be analogous to one another based on their related fields of endeavor, which would lead one of

ordinary skill to reasonably expect a successful combination of the teachings.

Regarding claim 9, Hylton and Lotspeich disclose the content reception apparatus according to claim 8.

Hylton and Lotspeich do not expressly disclose wherein said content-specifying information is updated based on type of said content returned by said content reception apparatus to said distributor, however, Hylton does disclose wherein said content-specifying information is updated as shown above regarding claim 7 and Lotspeich discloses means for returning said received content to a distributor as shown above regarding claim 8.

Examiner takes Official Notice (see MPEP § 2144.03) that updating information in a menu based on changes that occur within a database was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding

the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art listed in the attached PTO-892 form disclose methods and systems for content distribution and subject matter related thereto.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gcn

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100